

1:16-cv-134-SM

Page 2

AO 243 (Rev. 01/15)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT COURT
SENTENCE BY A PERSON IN FEDERAL CUSTODY DISTRICT OF N.H.
FILED

United States District Court	District of NEW HAMPSHIRE
Name (under which you were convicted): DANIEL RAY HUFSTETLER	Docket or Case No.: 12-CR-37-01-SM
Place of Confinement: UNITED STATES PENITENTIARY LEE	Prisoner No.: 12559-049
UNITED STATES OF AMERICA	Movant (include name under which convicted) HUFSTETLER
V.	

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

UNITED STATES DISTRICT COURT OF NEW HAMPSHIRE CONCORD, NH. 03301
55 Pleasant Street

(b) Criminal docket or case number (if you know): **12-CR-37-01-SM**

2. (a) Date of the judgment of conviction (if you know): **4-1-2014**

(b) Date of sentencing: **4-1-2014**

3. Length of sentence: **180 Months confinement and 3 years Supervised release**

4. Nature of crime (all counts):

Robbery of A Credit Union 18 USC § 2113(a)

5. (a) What was your plea? (Check one)

(1) Not guilty

(2) Guilty

(3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one)

Jury

Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes

No

8. Did you appeal from the judgment of conviction?

Yes

No

9. If you did appeal, answer the following:

- (a) Name of court: UNITED STATES First Circuit Court of Appeals
- (b) Docket or case number (if you know): 14-1393
- (c) Result: Affirmed
- (d) Date of result (if you know): 3-20-2015
- (e) Citation to the case (if you know): United States v. Hufstetler, 782 F.3d 19 (1st Cir. 2015)
- (f) Grounds raised:

**# I - A COERCED CONFESSION IS CONSIDERED INVOLUNTARY,
AND ITS ADMISSION INTO EVIDENCE REQUIRES REVERSAL OF A CONVICTION**

**# II - THE DISTRICT COURT COMMITTED REVERSIBLE ERROR BY ADMITTING INTO
EVIDENCE MR. HUFSTETLER'S SELF INCRIMINATORY STATEMENT THAT HAD BEEN COERCED BY
THREATS AND PROMISES CONCERNING THE WELL BEING OF HIS PREGNANT GIRLFRIEND, WHO WAS BEING HELD IN CUSTODY
AT THE TIME OF THE INTERROGATION, AND BY FAILING TO ANALYZE THE CIRCUMSTANCES THAT GAVE RISE TO THE STATEMENT.**

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

- (1) Docket or case number (if you know): 15-5129
- (2) Result: Petition for a writ of certiorari denied
- (3) Date of result (if you know): October 5th, 2015
- (4) Citation to the case (if you know): Hufstetler v. United States, 2015 U.S. LEXIS 5071
- (5) Grounds raised: Weather it violates an accused's rights under (U.S., Oct. 5, 2015)
the Fifth and Fourteenth Amendments to the United States Constitution
for government agents to extract a confession from the accused
through the use of threats against, and promises regarding the
accused's loved ones, including children, which confession was then
admitted into evidence against the accused at trial.

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: _____
- (2) Docket or case number (if you know): _____
- (3) Date of filing (if you know): _____
- (4) Nature of the proceeding: _____
- (5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result: - Inapplicable -

(8) Date of result (if you know): - Inapplicable -

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

- Inapplicable -

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Trial Lawyer was ineffective for conceding and not having an evidentiary hearing, to establish the facts that my November 17th, 2011 incriminating statement was involuntary.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Please See Docket Entry 39 Entry Date: 11-19-2012

(b) **Direct Appeal of Ground One:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

- (2) If you did not raise this issue in your direct appeal, explain why:

My Direct Appeal Lawyer was ineffective.

(c) **Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: - N/A -

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

- (3) Did you receive a hearing on your motion, petition, or application?

Yes No

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes No

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

- N/A -

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

- N/A -

GROUND TWO: My Direct Appeal Joshua L. Solomon was ineffective

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

He raised the issue of the involuntariness of my November 17th, 2011 statement, yet failed to ask for a remand to establish the facts.

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

Direct Appeal Lawyer Joshua L. Solomon was ineffective

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: - N/A -

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

- N/A -

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

- N/A -

GROUND THREE: - N/A -

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Three:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

- (2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

-
- (3) Did you receive a hearing on your motion, petition, or application?

Yes No

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes No

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

- (6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

- (7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: _____

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

- (2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

GROUND ONE:

Trial and Direct Appeal counsel (respectively) were ineffective.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

- (a) At the preliminary hearing: *Jeffery S. Levin
Federal Defender's Office
22 Bridge Street CONCORD, NH. 03301*
- (b) At the arraignment and plea: *Jeffery S. Levin Federal Defender's Office
22 Bridge Street CONCORD, NH. 03301*
- (c) At the trial: *MARK L. SISTI
387 Dover Road
Chichester, NH. 03258*
- (d) At sentencing: *MARK L. SISTI
387 Dover Road
Chichester, NH. 03258*
- (e) On appeal: *Joshua L. Solomon
133 Federal Street
Boston, MA. 02110*
- (f) In any post-conviction proceeding:
- N/A -

(g) On appeal from any ruling against you in a post-conviction proceeding:

- N/A -

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

- N/A -

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final; *OCTOBER 5th, 2015*
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action; *-N/A-*
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or *- N/A -*
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence. *- N/A -*

Therefore, movant asks that the Court grant the following relief:

Reverse Conviction, Grant a New Trial without the use of November 17th, 2011 Statement.
or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on April 1st, 2016.
(month, date, year)

Executed (signed) on April 1st, 2016 (date)


Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Affidavit

I, Daniel Hufstetler, do hereby declare under penalty of perjury, Pursuant to U.S.C. Subsection §1746, that the following events occurred on November 16th, 2011 through March 20th, 2015

1. On November 16th, 2011 my Girlfriend Sheena Marzullo (whom was in the third trimester of her pregnancy with our child) along with her two Daughters (7 years and 13 years of age respectively) and I were traveling (as a 'Family') in a small car. Several Government vehicles (Federal and local) pulled us over. I was handcuffed and placed in the back of a Local New Hampshire Police car. I watched through the police car window as my pregnant Girlfriend was escorted by Authorities to a SUV. I then watched as her two Daughters were escorted by Authorities to a SUV as well. I was then driven/extradited to the Berlin, NH. Police Department, and placed into a holding cell. While in the holding cell for a short time, I could hear Authorities fingerprinting/booking my pregnant Girlfriend Sheena Marzullo (I could hear the process, as the holding cell was very close to the booking area of the Berlin, NH. PD).
2. I was arrested just after 11PM on November 16th, 2011.
3. I was arraigned on a State robbery charge (same robbery/only robbery) in New Hampshire on November 17th, 2011.
4. I was released from New Hampshire custody for said robbery charge upon my Grandmother (Nancy Howell) posting a \$25,000.00 straight cash bond on March 9th 2012.

5. On March 21st, 2012, I was Federally Indicted on Said robbery charge.

6. I was taken into Federal Custody for Robbery of A Credit Union on March 22nd, 2012.

7. I was arraigned on the Federal Charge of Robbery of a Credit Union, and Federal Defender Jeffrey Levin was assigned to represent me on Said Charge on March 23rd, 2012.

8. My Grandmother (Nancy Howell) privately Retained Defense Attorney Mark L. Sisti (New Hampshire) to represent me for the entire duration of Said Case.

9. During the very first visit between Attorney Mark L. Sisti and myself, I made it very clear that (in the past and the present) I wholeheartedly loved and cared about the Safety, Prosperity and well being of my Girlfriend Sheena Marzullo (along with our unborn child) and her two Daughters (previously mentioned) More than myself (in all aspects of the above mentioned ways listed above)..

10. During the second visit between Attorney Mark L. Sisti and I, I expressed my solid request for a trial, and explained that during the Interrogation / Interview with Authorities on November 17th, 2011, my will was indeed overborne prior to, and while making an incriminating statement to Government Authorities concerning said robbery.

11. Mark L. Sisti filed a motion to Suppress (regarding my incriminating statement) See Docket Entry 28.

12. On November 19th, 2012, my Defense Attorney Mark L. Sisti sent the District of New Hampshire Clerk of Court a "Waiver to suppression hearing" notice/letter (please see Docket Entry 39).
13. On November 29th, 2012, the Motion to Suppress (above) was denied.
14. The very next piece of mail I received was a copy of the letter wrote to the Clerk of Court (please see Docket Entry 39).
15. Upon receiving said letter [copy of], I immediately filed a prose Petition for a request for Writ of Habeas Corpus (please see Docket Entry 42) because I was in total disagreement with Attorney Mark L. Sisti's decision to waive a Suppression hearing pertaining to the Motion to Suppress he filed..
16. On December 5th, 2012, by oral order, the District of New Hampshire Court denied my request for Writ of Habeas Corpus.
17. On December 10th, 2013, the Jury was Selected.
18. During trial, the Government called upon 16 witnesses, my defense called zero witnesses. No positive identification was made..
19. On December 12th, 2013, the Jury verdict was 'guilty'.
20. On April 1st, 2014, I was sentenced to 180 months and 3 years Supervised release.
21. On April 1st, 2014, I filed a notice of Appeal (please see Docket Entry 94).

22. CJA Lawyer Joshua L. Solomon Was appointed as my appellate counsel, appellate counsel and I had very little correspondence prior to him preparing a direct appeal. My direct appeal was denied on March 20th, 2015.

23. My 'Writ of Certiorari' was denied by the United States Supreme Court on October 5th, 2015.

In Summary, My trial lawyer, nor my appeal lawyer told me how important the facts were and the circumstances were in determining if my Statement was coerced. If my trial lawyer would have discussed the importance of the facts, I wouldn't have agreed with a "Waiver of Suppression hearing" (please see Docket Entry 39). My appeal lawyer did not discuss requesting a remand to develop these facts to be part of the appellate record. In a suppression hearing or a remand to the District of New Hampshire Court, the following facts would have been developed / established:

During the interview with Special Agent Laura Hanlon of the F.B.I. and Luc Poulin and Rich Plourde of the Berlin, NH. Police Department (respectively) on November 17th, 2011, the following is a record of questions, answers and feelings of mine.. (Please refer to the transcribed recording of the November 17th, 2011 interview above).

PAGE 4 [HANLON] "You're willing to speak with us tonight"

[POULIN] "Daniel, you know, we stopped you..." I then interrupted the officer with my first relevant question of the interview [DANIEL] "Could you just tell me where my Girlfriend is?" ... I was anticipating asking the Authorities that question as soon as I had the opportunity (which is exactly why I could not 'refuse' to speak with the Authorities at that point in time).

PAGE 11 My feelings were extremely disturbed when I heard...
[HANLON] "You made her a participant. She's charged. That's why
She's here and that's your fault, and she has two kids at home."

I then had strong feelings of paranoia and confusion
because I indeed had had a close ('Father Figure') type of bond with
the two kids that the Agent (HANLON) spoke of. PAGE 17 [DANIEL]
"Going through the process is not good for her". (referring to Sheena,
being incarcerated while pregnant, and evidently in 'immediate distress' as
a Mother being separated from her two children in this manner).

[HANLON] "I wouldn't think so. She's six and a half months
pregnant with your child". During the beginning of Sheena
and I's relationship, Sheena had made me aware that she had
a miscarriage due to stress, in a previous pregnancy of hers.

In short, The Authorities made me feel extreme
pressure with their comments et cetera during the interview,
making me feel extremely burdened by the emotional and physical
state in which Sheena and her two young Daughters had been
instantly put in that night Sheena was placed into Police custody
for doing something that she did not do.

Being as though I truly, deeply and sincerely
Cared about Sheena, Celestial, Akira and our unborn child
much, much more than myself; my will was absolutely overborne
while making an incriminating statement to Authorities regarding
a robbery that took place on November 14th, 2011 in Berlin, NH.
To this day, at an evidentiary hearing, Sheena, Celestial and Akira
would confirm my (Father Figure-like) feelings I had for them.

The reason why the direct appeal was denied, was because my trial Lawyer waived a suppression hearing; And my appellate Lawyer did not request a remand. With these important facts developed, the District Court would have clearly ruled that the November 17th, 2011 statement was involuntary and coerced.

AFFIANT FURTHER SAYETH NOT.

Duly Sworn this 1st Day of April, 2016.

Signed:

Daniel Hufstetler

DANIEL HUFSTETLER
#12559-049

United States Penitentiary LEE

CERTIFICATE OF SERVICE

I, Daniel Huftetler, hereby Certify that this Affidavit and Motion (Under 28 U.S.C § 2255) was Served upon the Clerk of Court for the United States Court District of New Hampshire via the Inmate Mailing System in The United States Penitentiary LEE on this 1st Day of April, 2016, and a copy will be served via the Clerk of Court through the ECF service/system to the United States Prosecutor for the District of New Hampshire (under the Paper Reduction Act).

Served upon:

UNITED STATES CLERK OF COURT
DISTRICT OF NEW HAMPSHIRE
55 Pleasant Street
Concord, NH. 03301

UNITED STATES ATTORNEY
UNITED STATES PROSECUTOR
DISTRICT OF NEW HAMPSHIRE
53 Pleasant Street
Concord, NH. 03301

(I do not know or have access to their E-mail)

Signed Daniel Hufstetler
(Movant)

This 1st day of April, 2016.

COVER LETTER (for 7 page Affidavit and §2255 Motion)

To: Clerk of the Court

United States District Court, New Hampshire
Concord, NH 03301 DISTRICT OF N.H.

Dear, Clerk of Court (for the United States Court District of New Hampshire)

2016 APR -8 AM 11:42

I am enclosing a 7page Affidavit and an official §2255 Motion/
application in regards to #12-CR-37-01-SM written and signed by
me (Daniel Hufstetler), mailed via the Inmate Mailing System in the United States
Penitentiary LEE (within the F.B.P. = Federal Bureau of Prisons) on April 1st, 2016.

Please stamp it (Filed), and serve the United States Attorney for
the District of New Hampshire through the ECF system if you are allowed
to do so (every since the 'paper reduction Act' was approved). I would
very much appreciate if you could also send confirmation to me that you received
this from me. My mailing address is:

From: DANIEL HUFSTETLER #12559-049
UNITED STATES PENITENTIARY LEE
PO BOX 305
JONESVILLE, VA. 24263-0305

Respectfully, Daniel Hufstetler

signed: _____

April 1st, 2016